TWITCHELL v. THE COMMONWEALTH.

1. Writs of error to State courts are not allowed as of right. The practice is to submit the record of the State courts to a judge of this court, whose duty it is to ascertain upon examination whether any question, cognizable here upon appeal, was made and decided in the proper court of the State, and whether the case upon the face of the record will justify the allowance of the writ.
2. The present case being one, however, where the petition was made by a prisoner under sentence of death, within a very few days, the motion for allowance was permitted, in view of that circumstance, to be argued, at the earliest motion-day, before the full bench.
3. The court conceding that neither the 25th section of the Judiciary Act of 1789, nor the act of February 5th, 1867, makes any distinction between civil and criminal cases, in respect to the revision of the judgments of State courts by this court, decided that—
4. The 5th and 6th Amendments to the Constitution of the United States (relating to criminal prosecutions), were not designed as limits upon the State governments in reference to their own citizens, but exclusively as restrictions upon Federal power; *Baron* v. *The City of Baltimore* (7 Peters, 243), *Fox* v. *Ohio* (5 Howard, 434), and other cases to the same point with them, being herein concurred in.

THIS was a petition, by one Twitchell, for a writ of error to the Court of Oyer and Terminer of the City and County of Philadelphia, and the Supreme Court of Pennsylvania, with a view to the revision here of a judgment of the former court, affirmed by the latter court, which condemned the petitioner to suffer death for the crime of murder.

The case was this:

The Constitution of the United States, by its 5th Amendment, ordains, that no person shall be held to answer for a capital crime, nor be deprived of life "without due process of law;" and, by its 6th, that in all criminal prosecutions the accused shall enjoy the right "to be informed of the *nature and cause* of the accusation."

With these provisions of the Constitution in force, the legislature of Pennsylvania, by a statute of the 30th March, 1860, to consolidate, amend, and revise its laws relative to penal proceedings and pleadings, enacted thus:

"In any indictment for murder or manslaughter, it shall not

be necessary to set forth the *manner in which*, or the *means by which* the death of the deceased was caused; but it shall be sufficient in every indictment for murder, to charge that the defendant *did feloniously, wilfully, and of malice aforethought, kill and murder the deceased.*"

Under this statute Twitchell was indicted in the Court of Oyer and Terminer at Philadelphia, in December, 1868, for murder, the indictment presenting, that on a day named, he and his wife, with force, and arms, &c., "feloniously, wilfully, and of their malice aforethought, did make an assault," and one Mary Hill, "feloniously, wilfully, and of their malice aforethought, did kill and murder," contrary to the form of the act, &c. On this indictment Twitchell was convicted, and the Supreme Court of the State having affirmed the judgment, he was sentenced to be hanged on the 8th April, 1869.

Eight days previously to the day thus fixed, Mr. W. W. Hubbell, counsel of the prisoner, asked, and obtained leave, in this court, to file a motion for a writ of error, as above said, in the case; with notice to the Attorney-General of Pennsylvania, that the motion would be heard on Friday, April the 2d, the earliest motion-day of the court. The petition was heard, before the court *in banc*, on the 2d, accordingly. It set forth that, pending the suit, Twitchell had set up and claimed certain rights and privileges under the said 5th and 6th Amendments to the Constitution of the United States, and that the final decision was against the rights and privileges so set up and claimed. He therefore prayed, in order that the said Twitchell should enjoy his just privileges under the Constitution, and that what of justice and right ought to be done, should be done, that a writ of error should issue from this court to the Court of Oyer and Terminer of the City and County of Philadelphia, and the Supreme Court of Pennsylvania, with a view to the re-examination here of the judgment of the former court, affirmed by the latter.

The application was made under the 25th section of the

Argument in support of the motion.

Judiciary Act of 1789; the section* which gives such writ, where is drawn in question the validity of a statute of, or authority exercised under any State, on the ground of their being repugnant to the Constitution or laws of the United States, and the decision is in favor of such validity; or where is drawn in question the construction of any clause of the Constitution or statute of the United States, and the decision is against the title, right, privilege, or exemption specially set up, &c.; a provision, this last, re-enacted by act of February 5th, 1867,† with additional words, as "where any title, right, privilege, or immunity is claimed under the Constitution, or any statute of, or authority exercised under the United States, and the decision is against the title, right, privilege, or immunity specially set up," &c.

Mr. Hubbell, in support of the motion, contended, that the act of the Pennsylvania Assembly was repugnant to the 5th and 6th Amendments of the Constitution—to the last especially—that under these the prisoner had a right to be informed, before the trial, by the indictment, and so of record, that the murder was alleged to have been brought about by some particular instrument, or some instrument generally, or some means, method, or cause stated; to be informed, in other words, of the specific nature of the accusation, so as that he might be enabled to prepare for a defence; whereas, here the indictment stated but the general nature of the accusation, namely, that the prisoner had murdered Mrs. Hill; that the provisions of the Pennsylvania statute had been copied from a late British statute, and had departed from the principles of the common law—principles not more considerate and humane than just;—which, nevertheless, under the Constitution of the United States, remained, and remaining, were secured to all men; that the court below erred in not deciding in accordance with the view here presented, and that the warrant of the Governor for the execution was, therefore, not a "due process" of

* Stat. at Large, 85. † 14 Id. 385.

Opinion of the court.

law. In such a case the petitioner had a clear *right* to the interposition of this court, which he now respectfully asked. Mr. Hubbell read, in detail, cases* to show that the appellate power of this court extends to criminal cases, where the State is a party.

Mr. B. H. Brewster, Attorney-General of Pennsylvania, did not appear.

The CHIEF JUSTICE, on the Monday following, delivered the opinion of the court.

The application for the writ of error is made under the 25th section of the Judiciary Act of 1789, which makes provision for the exercise of the appellate jurisdiction of this court over judgments and decrees of the courts of the States.

Neither the act of 1789, nor the act of 1867, which in some particulars supersedes and replaces the act of 1789, makes any distinction between civil and criminal cases in respect to the revision of the judgments of State courts by this court; nor are we aware that it has ever been contended that any such distinction exists. Certainly none has been recognized here. No objection, therefore, to the allowance of the writ of error asked for by the petition can arise from the circumstance that the judgment, which we are asked to review, was rendered in a criminal case.

But writs of error to State courts have never been allowed, as of right. It has always been the practice to submit the record of the State courts to a judge of this court, whose duty has been to ascertain upon examination whether any question, cognizable here upon appeal, was made and decided in the proper court of the State, and whether the case upon the face of the record will justify the allowance of the writ.

In general, the allowance will be made where the decision appears to have involved a question within our appellate jurisdiction; but refusal to allow the writ is the proper course when no such question appears to have been made or

* Cohens *v.* Virginia, 6 Wheaton, 264; Worcester *v.* Georgia, 6 Peters, 515

decided; and also where, although a claim of right under the Constitution or laws of the United States may have been made, it is nevertheless clear that the application for the writ is made under manifest misapprehension as to the jurisdiction of this court.

In the case before us we have permitted the motion for allowance to be argued before the full bench because of the urgency of the case, and the momentous importance of the result to the petitioner.

It is claimed that the writ should be allowed upon the ground that the indictment, upon which the judgment of the State court was rendered, was framed under a statute of Pennsylvania in disregard of the 5th and 6th Amendments of the Constitution of the United States, and that this statute is especially repugnant to that provision of the 6th Amendment which declares, "that in all criminal prosecutions the accused shall enjoy the right" "to be informed of the nature and cause of the accusation against him."

The statute complained of was passed March 30, 1860, and provides that "in any indictment for murder or manslaughter it shall not be necessary to set forth the manner in which, or the means by which the death of the deceased was caused; but it shall be sufficient, in every indictment for murder, to charge that the defendant did feloniously, wilfully, and of malice aforethought, kill and murder the deceased; and it shall be sufficient, in any indictment for manslaughter, to charge that the defendant did feloniously kill the deceased."

We are by no means prepared to say, that if it were an open question whether the 5th and 6th Amendments of the Constitution apply to the State governments, it would not be our duty to allow the writ applied for and hear argument on the question of repugnancy. We think, indeed, that it would. But the scope and application of these amendments are no longer subjects of discussion here.

In the case of *Barron* v. *The City of Baltimore*,* the whole

* 7 Peters, 243.

question was fully considered upon a writ of error to the Court of Appeals of the State of Maryland. The error alleged was, that the State court sustained the action of the defendant under an act of the State legislature, whereby the property of the plaintiff was taken for public use in violation of the 5th Amendment. The court held that its appellate jurisdiction did not extend to the case presented by the writ of error; and Chief Justice Marshall, declaring the unanimous judgment of the court, said:

"The question presented is, we think, of great importance, but not of much difficulty. . . . The Constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual States. Each State established a constitution for itself, and in that constitution provided such limitations and restrictions on the powers of its particular government as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation and best calculated to promote their interests. The powers they conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally, and, we think, necessarily applicable to the government created by the instrument. They are limitations of power granted in the instrument itself, not of distinct governments framed by different persons and for different purposes."

And, in conclusion, after a thorough examination of the several amendments which had then (1833) been adopted, he observes:

"These amendments contain no expression indicating an intention to apply them to State governments. This court cannot so apply them."

And this judgment has since been frequently reiterated, and always without dissent.

That they "were not designed as limits upon the State governments in reference to their own citizens," but "ex-

clusively as restrictions upon Federal power," was declared in *Fox* v. *Ohio*, to be "the only rational and intelligible interpretation which these amendments can have."* And language equally decisive, if less emphatic, may be found in *Smith* v. *The State of Maryland*,† and *Withers* v. *Buckley and others*.‡

In the views thus stated and supported we entirely concur. They apply to the sixth as fully as to any other of the amendments. It is certain that we can acquire no jurisdiction of the case of the petitioner by writ of error, and we are obliged, therefore to

REFUSE THE WRIT.

TYLER *v.* BOSTON.

1. When a patent is claimed for a discovery of a new substance by means of chemical combinations of known materials, it should state the component parts of the new manufacture claimed, with clearness and precision, and not leave the person attempting to use the discovery to find it out by "experiment."
2. The doctrine of equivalents as applied to chemical inventions explained, and the distinction between mechanical inventions and chemical discoveries, where experiment is required to ascertain the effect of chemical substances, pointed out.
3. Whether one compound of given proportions is substantially the same as another compound varying the proportions, is a question for the jury.

TYLER brought suit, in the Circuit Court for Massachusetts, against the city of Boston, for infringement of a patent; the case being this:

The plaintiff professed to have discovered a new compound substance, being a combination of fusel oil with the mineral and earthy oils, which compound constitutes a burning fluid, "by which term," he says, "I mean a liquid which will burn for the purpose of illumination, without material smoke, in a lamp with a small solid wick, and without a chimney."

The claim of his patent which the defendant was charged

* 5 Howard, 434. † 18 Id. 76. ‡ 20 Id. 90.